

Tab 2

SANDRA T. AYRES, Counsel
sayres@scarincihollenbeck.com
Direct Phone: 201-623-1222 Direct Fax: 201-806-3510

July 9, 2008

Via Federal Express

Walter E. Mugdan, Director
Division of Environmental Planning
and Protection
United States Environmental Protection
Agency, Region 2
290 Broadway
New York, NY 1007-1866

Re: Ocean County Landfill Corporation

Dear Mr. Mugdan:

This letter is in response to the questions and requests for documents in your letter of May 16, 2008 addressed to the President of Ocean County Landfill Corporation ("OCLC"). OCLC is the owner/operator of the Ocean County Landfill Facility ("OCLC Landfill" or "Landfill") located in Manchester Township, New Jersey. OCLC holds a Title V Operating Permit issued by the New Jersey Department of Environmental Protection. As indicated in your letter, Region 2 of the United States Environmental Protection Agency ("USEPA") is evaluating whether the OCLC Landfill is under common control with two adjacent electric power facilities that use landfill gas as fuel ("LFG-to-Energy Facilities").

It is OCLC's position, as you know, that its Landfill is not in common control with the LFG-to-Energy Facilities. Your letter states that the requested information is supplemental to information that Region 2 already has in its possession. This includes the OCLC Position Paper provided to USEPA General Counsel's Office prior to our meeting in Washington, D.C. on January 11, 2008. The Position Paper sets forth the basis for OCLC's position. OCLC has not received any notice or analysis from USEPA suggesting to the contrary. At the January 11th meeting in Washington, we were informed that the questions in your May 16th letter would be forthcoming. We were also advised that following receipt of the responses, if USEPA believes it has reason to question OCLC's position, another meeting will be scheduled to discuss the matter further.

OCLC's responses to the questions and document requests in the May 16th letter are enclosed. A number of companies are involved in the contractual transactions regarding the LFG-to-Energy

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ENVIRONMENTAL PROTECTION
AGENCY REGION 2

July 9, 2008

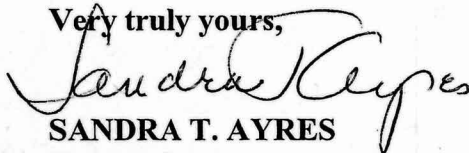
Page 2

Facilities and referenced in the responses. The OCLC-related companies are Atlantic Pier Company, Inc. ("APC"), Atlantic Pier Leasing Company, Inc. ("APLC") and GASCO, LLP ("GASCO"). The owners of the two LFG-to-Energy Facilities are MRPC Holdings, LLC, formerly Manchester Renewable Power, Inc. ("MRPC") and Ocean Energy Holdings, LLC, formerly Ocean Energy Corporation, Inc. ("OEC"). When MRPC purchased the OEC stock both companies were affiliated with Michigan Cogeneration Systems, Inc. ("MCSP") which traded as Landfill Energy Systems. We understand that the latter is now LES Project Holdings, LLC ("LES."). We expect that LES will be providing more comprehensive answers to questions regarding the LES-related companies.

Attached to the enclosed OCLC responses is a chart that graphically displays the ownership relationships of the OCLC-related companies and a second chart provided to us by representatives of LES showing the current ownership structure of MRPC and OEC. They provide the backdrop for the enclosed responses to the questions in the May 16th letter.

Thank you for your patience in allowing the time necessary to compile and prepare the enclosed responses. If more information is needed, please feel free to call. Representatives of OCLC will be available to meet with you at your convenience, should this become necessary.

Very truly yours,



SANDRA T. AYRES

For the firm

STA/vk

Encl.

Cc: Patricia K. Hirsch, Gen. Counsel, USEPA
Lawrence C. Hesse, Pres., OCLC
Marianne C. Hesse, Pres., APC, APLC
Kenneth von Schaumburg, Esq.
Scott Salisbury, LES
Bill Owen, LES

**OCEAN COUNTY LANDFILL CORPORATION
RESPONSES TO MAY 16, 2008 UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2 REQUESTS FOR INFORMATION AND DOCUMENTS**

As requested, the following responses coincide with numbering and headers in the May 16th letter.

A. Factual Background Section of the Position Paper

- (1) We understand that LES will be responding to questions regarding the technical capabilities of the engines used at the MRPC and OEC LFG-to-Energy Facilities. At this point, these Facilities are permitted to operate as 100% renewable energy facilities using only landfill gas ("LFG") as fuel. Transaction documents with the OCLC-related companies relative to each of the LFG-to-Energy Facilities so provide, for one to maximize the economic and environmental benefits resulting from the maximum possible use of LFG as a renewable resource.

In addition, exclusive use of LFG reflects decisions made by the New Jersey Board of Public Utilities ("NJBPUP"). With respect to MRPC, enclosed in response to Question (3) is the NJBPUP Order approving its Power Purchase Agreement with the public utility Jersey Central Power & Light ("JCP&L"). This Agreement was reached following MRPC's response to a JCP&L Standard Offer to pay an amount equal to avoided costs for electricity produced by qualifying facilities as defined in the federal Public Utility Regulatory Policies Act (commonly referred to as PURPA). At page 2 of the Order, NJBPUP acknowledged the high cost to tie-in to a nearby source of back-up fossil fuel, and required connection only if the power availability standard in the Power Purchase Agreement could not be met using exclusively LFG.

Regarding OEC's exclusive use of LFG, this is a condition of the grant for a LFG-to-Energy project awarded by NJBPUP pursuant to its Renewable Energy Power Program ("Program"). The letter authorizing a grant equal to 20% of qualified project costs and documents describing the parameters of the Program are enclosed in response to Question (18). As stated at paragraph 18 in the Q&A document, the authorizing statute permitted such grants only for 100% Class I renewable energy facilities. Co-fired facilities were ineligible.¹

- (2) The phrase "arm's length negotiation" as used in the OCLC Position Paper is a term of art used in many legal contexts. It means a negotiation by unrelated parties with divergent economic interests and equal bargaining power culminating in an agreement that they were under no obligation to enter into and which provides mutual benefits. Ortiz v. Fibreboard Corporation, et al., 119 S. Ct. 2295 (1999); Robert F. Kennedy Med. Center v. Leavitt, 526 F. 3d 57, 559 (9th Cir. 2008); Chicago District Council of Carpenters Welfare Fund v. Acremark, Inc., 474 F.3d 463, 470-471 (7th Cir. 2006); Cox Enters. V. New-Journal Corp., 510 F.3d 1350, 1357 (11th Cir. 2007); *see also* Webster's Dictionary definition of "arm's length"

¹ For this reason, NJBPUP rejected an application filed the previous year by ConEdison for a co-fired facility that would use natural gas in addition to LFG from the OCLC Landfill.

With respect to the MRPC transactions, the OCLC-related companies were unrelated to MCSI/LES and the parties had equal bargaining power. The former's economic interest was in maximizing revenues from the sale of LFG and the latter's divergent economic interest was in minimizing expenses. They negotiated the economic terms of the transactions (among other terms) over many months. They executed transaction documents that neither side was under any compulsion to enter into and which provide benefits to all parties. This constitutes the "arm's length negotiation of the economic terms" of their transactions referred to in the OCLC Position Paper.

- (3) We expect that LES will provide a copy of MRPC's Purchase Power Agreement with JCP&L. Enclosed is a copy of the NJBPU Order approving the Agreement.
- (4) The term of the MRPC Power Purchase Agreement is stated in the Agreement. The OCLC-related companies are not aware of any amendments to the Agreement. One of the website addresses provided in the May 16th letter refers to a merger affecting JCP&L. The OCLC-related companies are not familiar with the corporate structure of JCP&L, or any restructuring thereof, nor do they have any reason to be. LES may be able to provide more information on the subject.
- (5) With respect to the meaning of the phrase "arm's length negotiation of the economic terms" as used in the OCLC Position Paper with respect to the OEC transactions, see the response to Question (2) regarding the MRPC transactions. As in the case of the MRPC transactions, the negotiations leading to the OEC agreements were between unrelated parties, namely the OCLC-related companies and LES-related companies. The parties had equal bargaining power, the negotiations took place over many months, the parties had divergent economic interests, they were under no compulsion to execute the final agreements and the agreements executed were of benefit to both sides. This constituted an arm's length negotiation of the economic terms of the OEC transactions as represented in the OCLC Position Paper. Proprietary pricing information is understandably redacted in transaction documents previously provided by OCLC and in the documents enclosed.

Regarding the reference in the Position Paper to OEC's connection to a JCP&L distribution power line, this was merely background information and of no common control significance. Regarding OEC's Power Purchase Agreement, we expect that LES will provide a copy and answer all related questions.

B. Common Control Analysis section of the Position Paper

- (6) As requested, the beginning and ending page numbers of the relevant discussions in the cases cited in OCLC's Position Paper are provided below:

Passages on page 478 in Duquesne Light Co. v. United States Environmental Protection Agency, 698 F.2d 456, 478 (D.C. Cir. 1983) relative to an interpretation of "common control" under the federal Clean Air Act ("CAA") are:

To invoke the inability to comply exemption [from CAA requirements], a source must show that its inability was entirely beyond not only its own control, but also the control of those entities controlling it. In the language of section 120, the source must show that the "inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source." [Sec.] 120(a)(2)(B)(iv).

EPA's implementing regulations look to management structure to interpret this requirement. EPA defines "control" as follows:

"Control" (including the terms "controlling", "controlled by", and "under common control with") means the power to direct or cause the direction of the management and policies of a person or organization, whether by the ownership of stock, voting rights, by contract, or otherwise."

The discussion regarding common control under a similar definition in regulations of the Securities and Exchange Commission appears in TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976), at Part III, Section A of the opinion which begins on page 451 and ends on page 454. The discussion of common control under regulations of the Internal Revenue Service appears in New York State Teamsters Conference Pension and Retirement Fund v. Doren Ave., Assoc., 321 F. Supp. 2d 435 (D.C.N.Y. 2004), at Part B, Section 1 of the opinion which begins on page 444 and ends on page 446.

As stated in the Position Paper, the passages indicated above are supportive of OCLC's position that common control cannot be found where the OCLC-related companies have no actual control over the management of the LES-related companies or the operations of their LFG-to-Energy Facilities or their emitting units and, furthermore, where the LES-related companies have no actual control over the management of the OCLC-related companies or the operations of the OCLC Landfill or its Gas Collection and Control System ("GCCS").

C. Requests for Documents

- (7) Enclosed is the March 16, 2006 Stock Purchase and Development Agreement by and between APC and MRPC.
- (8) Enclosed is the March 16, 2006 Site Lease by and between APLC and OEC.
- (9) Enclosed is the June 30, 1995, Facility Site Lease by and between APLC and MRPC.
- (10) Enclosed is the June 30, 1995, Gas Flare Service Agreement by and between OCLC and MRPC.
- (11) Enclosed is the January 1985 lease agreement between OCLC and APC.

- (12) The OCLC-related companies are not aware of any agreements between MRPC and OEC. We expect that LES will provide such agreements, if any.

D. Additional Questions and Requests

- (13) There is no current relationship between APC and OEC, nor has there been since the OEC stock was conveyed to MRPC in March 2006. On November 5, 2003, APC formed OEC as a new company for accounting purposes and to file a timely application for a grant under the NJBPU 2003 Program discussed in responses to Questions (1) and (18). A copy of the OEC Articles of Incorporation is enclosed. When it was first formed, the President of APC, Charles J. Hesse, III ("CJH"), was also President and the only Director of OEC. These functions with respect to OEC terminated with the conveyance of the OEC stock to MRPC in March 2006.

In addition, while the OEC transaction were being negotiated, but not yet finalized, it became necessary for OEC to submit an application to the New Jersey Department of Environmental Protection ("NJDEP") for a pre-construction permit for the LFG-to-Energy Facility planned by LES. Given the length of time it would take to complete the permitting process, waiting until the transaction documents were finalized would have jeopardized LES' ability to have the Facility in service by the January 1, 2006 eligibility deadline for Section 45 federal tax credits.² See 26 U.S.C.A. Sec. 45(d)(6). CJH signed the application as the responsible officer. Following MRPC's acquisition of the OEC stock, its President, Scott Salisbury, replaced CJH as the responsible party on the application.

- (14) The terms of the stock purchase agreement between APC and OEC are set forth in the enclosed March 16, 2006 Stock Purchase Agreement. It is not clear what additional information about the stock purchase is being requested.
- (15) The ownership of the OCLC-related companies and their relationships are shown on the attached graph. The OCLC-related companies have no direct knowledge regarding the ownership of OEC other than what is shown on the second attached chart. As part of the economic terms of the MRPC transactions, MCSI received a 30% share of the Section 29 federal tax credits. To achieve this, MCSI was made a minority member of GASCO. This membership was terminated when the credits terminated. At no time did MCSI have any control over GASCO. The majority voting members of GASCO were CJH and OCLC-related companies, and the Manager having exclusive managerial control was CJH and subsequently Marianne Hesse.

OCLC is, and has always been, the entity responsible for compliance with the CAA and federal and State regulatory requirements with respect to the operation of the OCLC Landfill and its GCCS. Neither MRPC nor OEC nor any other LES-related company has ever had, nor do they now have, any compliance obligations or functions with respect to the management or operations of the OCLC Landfill or GCCS. The OCLC-related companies

² The tax code was subsequently amended to extend the eligibility deadline to January 1, 2007.

have never had, nor do they now have, any compliance obligations or functions with respect to the management or operations of the MRPC and OEC LFG-to-Energy Facilities or their emitting units. The OCLC-related companies and MRPC and OEC have only commercial transactional relationships.³

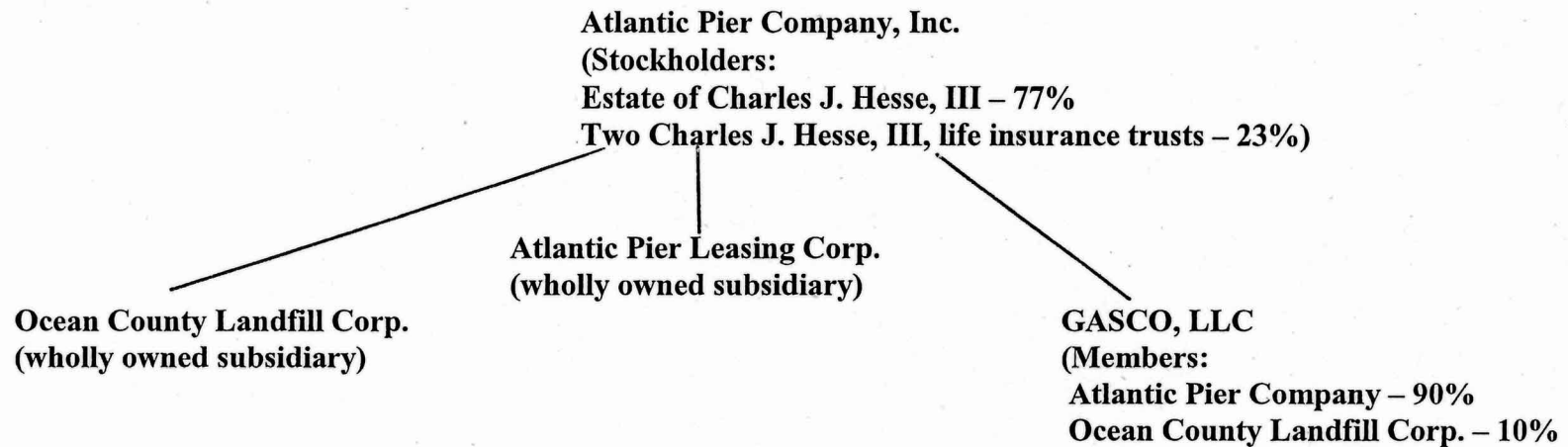
We expect that LES will provide responses regarding the functions and roles of MRPC and OEC with respect to their respective LFG-to-Energy Facilities.

- (16) The formation and original ownership of OEC is described in response to Question (13). To our knowledge, only one entity, OEC, Inc., was formed on 11/05/2003. *See* enclosed Articles of Incorporation. The OCLC-related companies have no direct knowledge of any changes in OEC's corporate status following MRPC's acquisition of the OEC stock on March 16, 2006, other than as reflected on the attached graph. We expect that LES will be providing information on this subject.
- (17) MRPC was initially formed as a new company by APC/APLC primarily to file a timely response to the JCP&L Standard Offer discussed in response to Question (1). Its stock was conveyed to MCSI/LES on June 30, 1995. Thereafter OCLC-related companies and MRPC have had commercial transactional relationships only. The OCLC-related companies have no direct knowledge as to the relationship between OEC and MRPC since APC conveyed the OEC stock to MRPC, other than as reflected on the attached graph. We expect that responses to this question and to the questions concerning the role and responsibilities of OEC and MRPC with respect to the operations of the LFG-to-Energy Facilities will be provided by LES.
- (18) Enclosed are copies of the following documents: (i) NJBPU's "2002/2003 Solicitation for The Renewable Energy Advanced Power Program To Support Distributed Renewable Electricity Generation in New Jersey" which describes conditions for grants to be awarded under the Program; (ii) NJBPU responses to questions regarding the Program indicating, at paragraph 18, that only projects using 100% renewable fuel qualified; and (iii) the letter received by OEC from the NJBPU Office of Clean Energy approving a grant for 20% of eligible project costs for a 9.4 MW LFG-to-Energy Facility. As of the date APC conveyed the OEC stock to MRPC, no project had been commenced, nor had any funding been provided, and the grant approval was OEC's only asset. We expect that LES will be providing responses to questions pertaining to post-conveyance grant matters.

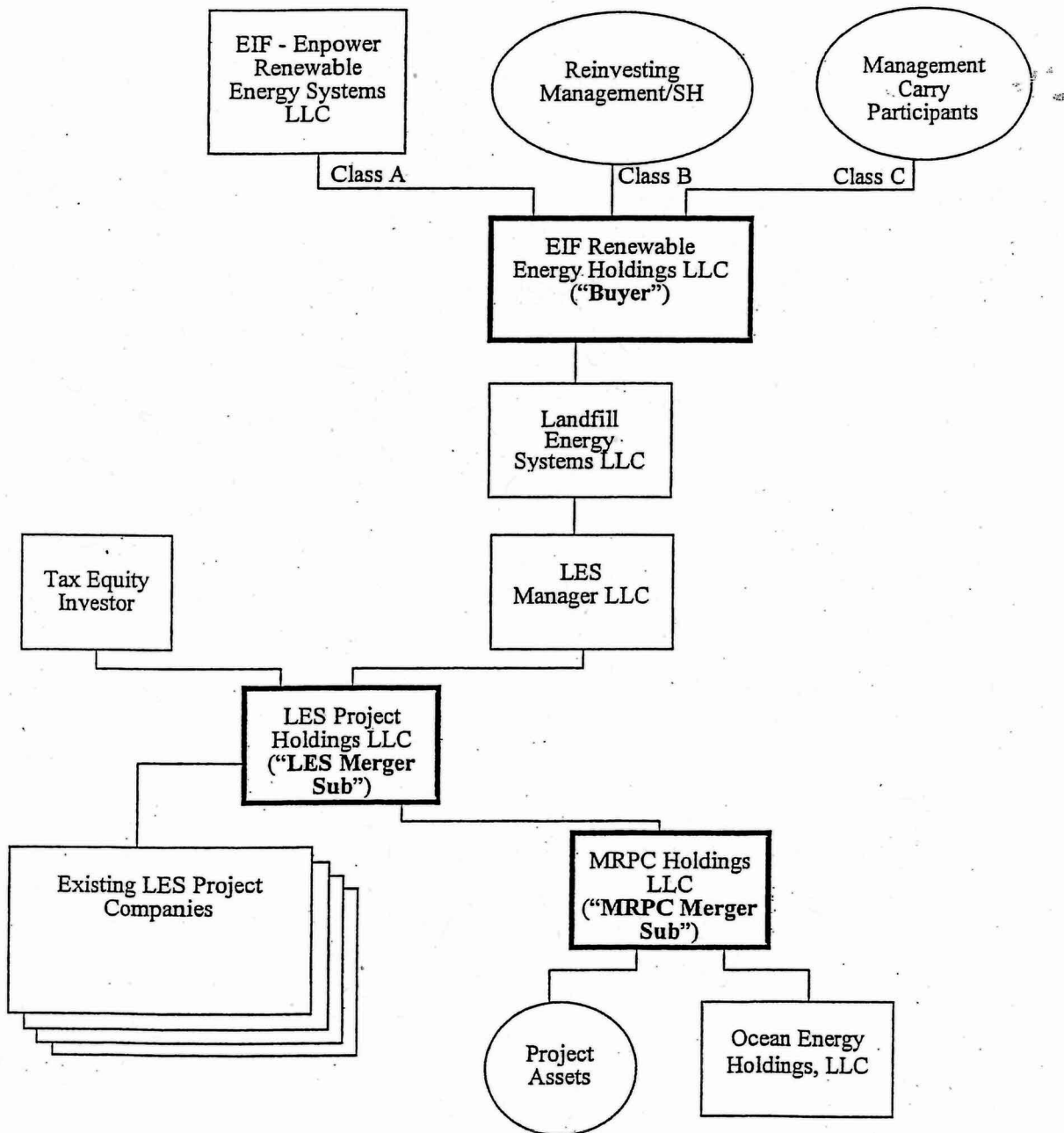
³ It is assumed that Question (15) is not referring to any relationship imposed by regulation or permitting. For example, New Source Performance Standards require OCLC to identify delivery to and treatment at the LFG-to-Energy Facilities as a means by which it manages the LFG they use as fuel. Another example is the requirement in MRPC's Title V Permit to send unused LFG to the OCLC flares (thus necessitating the Gas Flare Service Agreement between OCLC and MRPC enclosed in response to Question (10). For obvious reasons, a relationship resulting from a regulatory edict cannot be the basis for a common control finding. If it were, USEPA would be creating common control, whereas finding common control, if any, is the purpose of the regulatory definition.

- (19) CJH was not a business entity and thus has no business successor. His personal interests in the OCLC-related companies are held in his Estate pending distribution to heirs. His son, Lawrence Hesse, is now President of OCLC and his wife, Marianne Hesse, is now President of APC and APLC. Mrs. Hesse is the current Manager of GASCO. As indicated in responses to previous questions, CJH's position with MRPC and his position with OEC terminated with the conveyances of their stock to LES-related companies in June 1995 and March 2006, respectively. At the time he passed away, CJH had no functions with respect to MRPC and OEC, nor does his son or his wife have any role with respect to these companies today.
- (20) Scott Salisbury and Bill Owen have no functions or responsibilities with respect to any of the OCLC-related companies. We expect that LES will respond as to their functions with respect to MRPC, OEC, MCSI, LES, Energy Investors Funds, and Enpower Corporation. The OCLC-related companies have no direct knowledge with respect to such matters.

ATLANTIC PIER RELATED COMPANIES*



*Atlantic Pier also has ownership interests in construction companies and a recycling center which are not relevant to the company structure as it pertains to the delivery and sale of landfill gas to, and leasing of sites for, the landfill gas-to-energy power production plants.



ARTICLE 14. MISCELLANEOUS

Notices

14.01. All notices required under this lease must be given by certified mail or registered mail, addressed to the proper party, at the following addresses:

MRPC
29261 Wall Street
Wixom, Michigan

OCLC
P.O. Drawer 4
Belford, New Jersey

Any party may change the address to which notices are to be sent by giving the other parties notice of the new address in the manner provided in this section.

Parties Bound

14.02. This Agreement shall be binding upon, and inure to the benefit of, the parties to this agreement and their respective heirs, successors, and assigns when permitted by this agreement.

New Jersey Law to Apply

14.03. This Agreement shall be construed under, and in accordance with, the law of the State of New Jersey, and all obligations of the parties created by this lease are performable in Ocean County, New Jersey.

Legal Construction

14.04. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the

Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in this Agreement.

Prior Agreements Superseded

14.05. This Agreement constitutes the sole and only agreement of the parties to the Agreement and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement including but not limited to the letter of intent dated February 15, 1994.

Amendment

14.06. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

Force Majeure

14.07. No party shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material, labor restrictions or any other adverse decisions, actions, resolutions, injunctions or other activity by any governmental, administrative or judicial, authority, civil riot, floods, and any other cause not reasonably within the control of the party and which by the exercise of due diligence said party is unable, wholly or in part, to prevent or overcome. Any such occurrence shall be deemed a failure attributable to a "Force Majeure Event".

Such failure shall not be deemed to be a violation by such party of its obligations hereunder. A party shall give notice and full particulars of such Force Majeure Event as soon as possible after the occurrence thereof. The obligations of the party unable to perform by reason of the Force

Majeure Event shall be suspended for the duration of any Force Majeure Event; provided however, that this provision shall not relieve any party of its obligation to make money payments hereunder with respect to prior periods.

The party giving such notice shall with all reasonable dispatch undertake such actions within its control to remedy the Force Majeure Event and resume the performance of its obligations hereunder.

Corporate Resolutions

14.08. All parties hereto shall provide corporate resolutions, fully executed and in proper form, authorizing the appropriate corporate officers to execute and deliver this agreement on behalf of their respective corporations.

Remedy Inadequate at Law

14.09 MRPC and OCLC hereby acknowledge and agree that the breach by either of any duty or obligation arising under this Agreement will cause the other irreparable injury which is inadequately compensable in monetary damages, and, accordingly, either OCLC or MRPC may seek specific performance or such other equitable relief as may be appropriate in addition to any remedy at law.

Further Assurances

14.10 OCLC and MRPC each hereby agree to use reasonable efforts to provide each other with such additional instruments, documents or other further assurances as the other may reasonably request in the performance of any duty and obligation arising hereunder; provided however, that nothing herein shall obligate either OCLC or MRPC to assume any greater liabilities or obligations than are otherwise provided herein.

Books and Records

14.11 At all times while this Agreement is in effect and for at least two (2) years following termination or expiration thereof, each party to this Agreement shall maintain and preserve complete and accurate records of all accounts and related information and data pertaining to any price, quantity, royalty, or other matter concerning the parties' respective rights and obligations under this Agreement, and shall make such records and materials available for inspection and audit during reasonable business hours and upon reasonable notice.

IN WITNESS WHEREOF, the parties have duly set their hands and seals the day and year first above written.

WITNESS:

OCEAN COUNTY LANDFILL CORP.

[Signature] *[Signature]*

MANCHESTER RENEWABLE POWER
CORPORATION

Scott Lanthier *[Signature]*

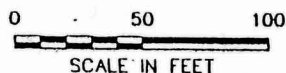
SCHEDULE A

MANCHESTER METHANE POWER PROJECT PARCEL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying, and being located in Manchester Township, Ocean County, New Jersey, said parcel being a portion of Block 2 Lot 6 now or formerly of Ocean County Landfill Corporation and being further described as follows:

Beginning at a point, said point being the Southwest Corner of the Existing Maintenance Building at the Ocean County Landfill Corporation and running S 53° 52' 36" W 145.39 feet to the Point of Beginning; thence, S 66° 54' 23" W 73.21 feet; thence, S 46° 42' 38" W 63.73 feet; thence, S 66° 54' 23" W 16.98 feet; thence, N 23° 05' 37" W 247.00 feet; thence N 66° 54' 23" E 150.00 feet; thence, S 23° 05' 37" E 225.00 feet to the point or place of beginning.

Containing 0.80 acres of land more or less.



DATE 7/7/95
DWN DBT
APP RAP
REV _____

OCEAN COUNTY LANDFILL CORP.
MANCHESTER METHANE POWER PROJECT
MANCHESTER COUNTY, OCEAN COUNTY, NJ

PARCEL

FIGURE
1

PROJECT NO.
82129.OLG.000

F:\Data\02129-LG\M005-07.dmg
 Date 7/8/98 Time 11:41 AM
 Operator: F0000000